

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE EVERGREEN ULTRA SHORT
OPPORTUNITIES FUND SECURITIES
LITIGATION

) No. 1:08-CV-11064-NMG
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**EVERGREEN FIXED INCOME TRUST AND INDIVIDUAL TRUSTEES' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

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*Counsel for Evergreen Fixed Income Trust, Charles
A. Austin, Shirley L. Fulton, K. Dun Gifford, Leroy
Keith, Jr., Gerald M. McDonnell, Patricia B.
Norris, William Walt Pettit, David M. Richardson,
Russell A. Salton III, Michael S. Scofield, Richard J.
Shima, and Richard K. Wagoner*

Defendants Evergreen Fixed Income Trust, Charles A. Austin, Shirley L. Fulton, K. Dun Gifford,¹ Leroy Keith, Jr., Gerald M. McDonnell, Patricia B. Norris, William Walt Pettit, David M. Richardson, Russell A. Salton III, Michael S. Scofield, Richard J. Shima, and Richard K. Wagoner (the “Evergreen Trust Defendants”) hereby move, pursuant to Rule 56 of the Federal Rules of Civil Procedure, that partial summary judgment be entered in their favor, dismissing Lead Plaintiffs’ claims under Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k, for the reasons set forth in the Evergreen Defendants’ Motion for Partial Summary Judgment and its supporting documentation, dated February 15, 2012.

WHEREFORE, the Evergreen Trust Defendants’ respectfully request that partial summary judgment be entered in the Evergreen Trust Defendants’ favor: (a) dismissing Lead Plaintiffs’ Section 11 claims based on the Fund’s holding of securities with long-stated maturities; and (b) dismissing Lead Plaintiffs’ Section 11 claims based on (i) the Fund’s holding of securities with long-stated maturities, and (ii) the failure to disclose the Fund’s spread duration, as being time barred for those class members who purchased shares of the Fund prior to June 24, 2007. The Evergreen Defendants also request such other and further relief as the Court deems just and proper.²

¹ Although the Evergreen Trust Defendants move for partial summary judgment on behalf of Gifford as one of the twelve individual trustees, the Evergreen Trust Defendants note that defendant Gifford passed away in May 2010.

² This Court dismissed Lead Plaintiffs’ claims against the Evergreen Trust Defendants under Section 12(a)(2) of the Securities Act, 15 U.S.C. § 771, by Decision and Order dated March 31, 2010. To the extent that Lead Plaintiffs’ Section 12(a)(2) claims stand, the Evergreen Defendants hereby move, pursuant to Rule 56 of the Federal Rules of Civil Procedure, that partial summary judgment be entered in their favor for the reasons set forth in the Evergreen Defendants’ Motion for Partial Judgment and its supporting documentation.

Respectfully submitted,

Dated: February 15, 2012

Ropes & Gray LLP

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LOCAL RULE 7.1 CERTIFICATE OF CONSULTATION

I hereby certify that counsel for the defendants have conferred with opposing counsel and have attempted in good faith to resolve or narrow the issues presented in the Evergreen Fixed Income Trust and Trustees' Motion for Partial Summary Judgment and have been unable to resolve the issues.

/s/ Robert G. Jones

CERTIFICATE OF SERVICE

I hereby certify that this document filed on February 15, 2012 through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and by U.S. Mail to those identified non-registrants on the date of filing.

/s/ Robert G. Jones